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**Sameh H. Aknouk Dental Services, P.C. and Local 553,
International Brotherhood of Teamsters.** Case
02–CA–263564

February 2, 2021

DECISION AND ORDER

BY CHAIRMAN MCFERRAN AND MEMBERS KAPLAN
AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that Sameh H. Aknouk Dental Services, P.C. (the Respondent) has failed to file an answer to the complaint. Upon a charge and a first amended charge filed by Local 553, International Brotherhood of Teamsters (the Union), on July 24 and September 8, 2020,¹ respectively, the General Counsel issued a complaint and notice of hearing on October 30 against the Respondent, alleging that it has violated Section 8(a)(3), (5) and (1) of the Act. The Respondent failed to file an answer.

On December 3, the General Counsel filed with the National Labor Relations Board a Motion for Default Judgment. Thereafter, on December 4, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively stated that unless an answer was received by November 13, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint are true. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated November 18, advised the Respondent that unless an answer was received by November 25, a motion for default judgment would be filed. Nevertheless, the Respondent failed to file an answer.

The record indicates that, since at least September 18, the Respondent has not been represented by counsel in this

proceeding.² Although the Board has shown some leniency toward respondents who proceed without the benefit of counsel, the Board has consistently held that the choice to forgo representation by counsel does not establish good cause for failing to file a timely answer. See, e.g., *Headlands Contracting & Tunnelling, Inc.*, 368 NLRB No. 4, slip op. at 1 (2019); *Patrician Assisted Living Facility*, 339 NLRB 1153, 1153 (2003); *Sage Professional Painting Co.*, 338 NLRB 1068, 1068 (2003). Here, the Respondent never filed an answer, and it offered no good cause explanation for its failure to do so, despite being reminded that its answer was due.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a New York corporation with facilities at 1473 West Avenue, Bronx, New York and 853 Broadway, New York, New York, where it has been engaged in the business of providing dental care.

Annually, in the course and conduct of its operations, the Respondent derives gross revenue in excess of \$250,000, and purchases and receives at its facilities supplies and materials valued in excess of \$5000 directly from suppliers located outside the State of New York.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, the following individuals have held the positions set forth opposite their names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and/or agents of the Respondent within the meaning of Section 2(13) of the Act:

Sameh Aknouk	-	Owner
Samia Aknouk	-	Manager
Ayman Ibrahim	-	Consultant

2. The following employees of the Respondent, the unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

Respondent. He subsequently confirmed this in a November 16 email to the Region.

¹ All dates are 2020 unless otherwise indicated.

² In a September 18 phone call with the Region, the Respondent's counsel of record stated that he was no longer representing the

Included: All employees employed by the Employer.

Excluded: Supervisors, guards, and professional employees as defined by the National Labor Relations Act.

3. Since about 2011 and at all material times, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 17, 2017, to April 16, 2020 (the Agreement).

4. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

5. About May 18, the Respondent, by Sameh Aknouk, threatened employees with discharge if they continued to protest changes in their working conditions.

6. About July 21, the Respondent, by Samia Aknouk, promised employees improved working conditions if they abandoned their support for or membership in the Union.

7. About July 30, the Respondent, by Samia Aknouk, threatened employees with unspecified reprisals if they continued to support the Union and engage in other concerted protected activities.

8. About July 20, and continuing to date, the Respondent reduced the work hours of its employees.

9. The Respondent engaged in the conduct described above in paragraph 8 because the Respondent's employees supported and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

10. About June 2, the Respondent, by Ayman Ibrahim, bypassed the Union and dealt directly with unit employees by consulting with them about changing their pension plan and health insurance.

11. About July 29, the Respondent, by Samia Aknouk, bypassed the Union and dealt directly with unit employees by bargaining directly with them to change their wages and pension benefits.

12. Since about May 18 and continuing to date, the Respondent has failed to make contributions to the unit employees' health insurance plan.

13. Since about July 20 and continuing to date, the Respondent reduced the work hours of unit employees.

14. The subjects set forth above in paragraphs 12 and 13 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

15. The Respondent engaged in the conduct described above in paragraphs 12 and 13 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

CONCLUSIONS OF LAW

By the conduct described above in paragraphs 5, 6, and 7, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

By the conduct described above in paragraphs 8 and 9, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(3) and (1) of the Act.

By the conduct described above in paragraphs 10 through 13, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the Act. The unfair labor practices of the Respondent described above affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) of the Act by reducing the work hours of its employees, we shall order the Respondent to make them whole for any loss of earnings or other benefits suffered as a result of the Respondent's unlawful actions against them. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

Further, we shall order the Respondent to compensate employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 2 allocating the backpay award to the appropriate calendar years for each employee, in accordance with *AdvoServ of New Jersey, Inc.*, 363 NLRB 1324 (2016).

In addition, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by bypassing the Union and dealing directly with employees regarding their pension benefits, their health insurance plan and their wages,

we shall order the Respondent to cease and desist from this unlawful conduct. We shall also order the Respondent, before implementing any changes in the wages, hours, and conditions of employment of unit employees, to notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of the unit employees.

Further, having found that the Respondent violated Section 8(a)(5) and (1) of the Act by unilaterally ceasing contributions to the employees' health insurance plan, we shall order the Respondent to rescind this change and retroactively restore the status quo. In addition, the Respondent shall make its unit employees whole for any losses suffered as a result of the Respondent's unlawful conduct by making all required contributions that have not been made since May 18, 2020, including any additional amounts due in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). The Respondent shall also reimburse unit employees for any expenses ensuing from its failure to make the required health insurance contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons*, supra, and *Kentucky River Medical Center*, supra.³

ORDER

The National Labor Relations Board orders that the Respondent, Sameh H. Aknouk Dental Services, P.C., Bronx and New York, New York, its officers, agents, successors, and assigns shall

1. Cease and desist from
 - (a) Threatening employees with discharge for protesting changes to their terms and conditions of employment.
 - (b) Threatening employees with unspecified reprisals for supporting the Union and engaging in other concerted protected activities.
 - (c) Promising employees improved working conditions if they abandon their support for, or membership in, the Union.
 - (d) Bypassing the Union and dealing directly with employees regarding their terms and conditions of employment.
 - (e) Changing the terms and conditions of employment of unit employees without first notifying the Union and giving it an opportunity to bargain.
 - (f) Reducing the work hours of unit employees because of their support for and assistance to the Union, because

they engaged in concerted activity, or to discourage employees from engaging in such activities.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the following bargaining unit:

- | | |
|-----------|---|
| Included: | All employees employed by the Employer. |
| Excluded: | Supervisors, guards, and professional employees as defined by the National Labor Relations Act. |

(b) Rescind the unilateral changes to the terms and conditions of employment of the unit employees, including reductions to their hours of work and the cessation of contributions to their health insurance plan, and restore the status quo that previously existed.

(c) Make whole unit employees for any loss of earnings and other benefits suffered as a result of the unlawful unilateral reduction in their hours of work, in the manner set forth in the remedy section of the decision.

(d) Make all contributions to the unit employees' health insurance plan that have not been made since May 18, 2020, and make the unit employees whole for any expenses ensuing from its failure to make such contributions, including any additional amounts due the plan on behalf of the unit employees, with interest, in the manner set forth in the remedy section of this decision.

(e) Compensate affected unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each affected unit employee.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form,

³ To the extent that an employee has made personal contributions to the health insurance plan that were accepted in lieu of the Respondent's contributions during the period of delinquency, the Respondent will

reimburse the employees, but the amount of such reimbursement will constitute a setoff to the amount the Respondent otherwise owes the health insurance plan.

necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its Bronx, New York and New York, New York facilities copies of the attached notice marked “Appendix.”⁴ Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent’s authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 24, 2020.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 2 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 2, 2021

Lauren McFerran, Chairman

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁴ If the facilities involved in this proceeding are open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facilities involved in this proceeding are closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facilities reopen and a substantial complement of employees return to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT threaten you with discharge for protesting changes to your terms and conditions of employment.

WE WILL NOT threaten you with unspecified reprisals for supporting the Union and engaging in other concerted protected activities.

WE WILL NOT promise you improved terms and conditions of employment if you abandon your support for, or membership in, the Union.

WE WILL NOT bypass the Union and deal directly with you regarding your terms and conditions of employment.

WE WILL NOT change your terms and conditions of employment, including your hours of work and your health insurance benefits, without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT reduce your work hours because you supported or assisted the Union, or to discourage other employees from doing so.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of our employees in the following bargaining unit:

posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading “Posted by Order of the National Labor Relations Board” shall read “Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.”

- Included: All employees employed by the Employer.
- Excluded: Supervisors, guards, and professional employees as defined by the National Labor Relations Act.

WE WILL rescind the unilateral changes to your terms and conditions of employment, including the reduction of your work hours and the cessation of contributions to your health insurance plan.

WE WILL make you whole for any loss of earnings and other benefits you may have suffered as a result of our unlawful unilateral reduction in your hours of work.

WE WILL make all contributions to your health insurance plan that we have failed to make since May 18, 2020, including any additional amount due the plan, and WE WILL make you whole for any expenses ensuing from our failure to make such contributions, with interest.

WE WILL compensate you for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 2, within 21 days of the date the amount of backpay is fixed,

either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

SAMEH H. AKNOUK DENTAL SERVICES, P.C.

The Board's decision can be found at www.nlr.gov/case/02-CA-263564 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

